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FACSIMILE TRANSMITTAL

TO:

Name: Mail Stop AMENDMENT
Group Art Unit 3733/Examiner James L. Swiger III

Firm: U.S. Patent & Trademark Office

Fax No.: 571-273-8300

Subject: U.S. Patent Application No. 10/675,820

Gary K. Michelson

Filed: September 30, 2003

DYNAMIC GUARD

Attorney Docket No. 101.0093-01000

Customer No. 22882

Confirmation No.: 6670

FROM:

Name: Thomas H. Martin, Esq.

Phone No.: 330-877-2277

No. of Pages (including this): 7

Date: May 7, 2008

Confirmation Copy to Follow: NO

Message:**CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8**

I hereby certify that the attached Transmittal Form (in duplicate) and Reply to Office Action are being facsimile transmitted to the U.S. Patent and Trademark Office on May 7, 2008.


Sandra L. Blackmon

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FORM PTO-1083

Attorney Docket No.: 101.0093-01000
Customer No. 22882

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Gary K. Michelson

Serial No: 10/675,820

Filed: September 30, 2003

For: DYNAMIC GUARD

Confirmation No.: 6670

Art Unit: 3733

Examiner: James L. Swiger III

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:


Transmitted herewith is a Reply to the Office Action dated February 7, 2008 in the above-identified application.

- ☒ No additional fee is required.
- ☐ Applicant hereby requests a ***-month extension of time to respond to the above office action.
- ☐ An Information Disclosure Statement and Form PTO/SB/08 are enclosed.
- ☐ The total amount of \$*** to cover the above fees is to be charged to Deposit Account No. 50-3726.
- ☒ The Commissioner is hereby authorized to charge any deficiencies of fees associated with this communication or credit any overpayment to Deposit Account No. 50-3726. **A copy of this sheet is enclosed.**
- ☒ Any filing fees under 37 C.F.R. § 1.16 for the presentation of extra claims
- ☒ Any patent application processing fees under 37 C.F.R. § 1.17

Respectfully submitted,

MARTIN & FERRARO, LLP

Date: May 7, 2008

By: 
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Transmittal of Reply to O.A.DOC

FORM PTO-1083

Attorney Docket No.: 101.0093-01000
Customer No. 22882

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Gary K. Michelson

Serial No: 10/675,820

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Respectfully submitted,

MARTIN & FERRARO, LLP

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Transmittal of Reply to OA.DOC

PATENT
Attorney Docket No. 10/675,820
Customer No. 22882

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Gary K. Michelson
Serial No.: 10/675,820
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) Confirmation No.: 6670

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) Examiner: James L. Swiger III

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Sir:

REPLY TO OFFICE ACTION

In reply to the Examiner's Office Action of February 07, 2008, the following remarks are submitted.

In the Office Action, the Examiner rejected claims 1-28 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publication No. 2003/0135220 to Cauthen ("Cauthen") in view of U.S. Patent No. 5,846,249 to Thompson ("Thompson"). In doing so, the Examiner indicates that Cauthen discloses "the claimed invention except for more specifically an axis that passes through at least a portion of the pathway, allowing the two portions to articulate and distract vertebrae," but that "Thompson discloses this feature, having two curved halves articulate about an axis that passes through at least a portion of the passageway (see joints via 123)." According to the Examiner, "[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Cauthen having at least the axis that passes through at least a portion of the pathway in view of Thompson to better use the device to distract the vertebrae." However, contrary to the Examiner's contentions, Applicant submits that the rejection of independent claim 1 under 35 U.S.C. § 103(a) based on a combination of Cauthen and Thompson cannot be maintained.

In KSR International Co. v. Teleflex Inc. et al., the Supreme Court reaffirmed the framework for governing obviousness under 35 U.S.C. § 103(a) as set forth in Graham et al. v. John Deere Co. of Kansas City et al., 383 U.S. 1, 148 U.S.P.Q. 459 (1966).

Reply to Office Action 5-7-08.doc